

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
)	
Decision of the)	CC Docket No. 02-6
Universal Service Administrative Company)	File No. _____
)	
By)	
)	
Public Prep Network)	
FCC Form 472 SLD Invoice ID #: 2268319)	
Funding Request #: 2629392)	

To: Office of the Secretary, FCC
Attention: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Pursuant to 47 C.F.R. §54.719(b) and §54.719(c), Public Prep Network, BEN # 16051550 (“Public Prep”) respectfully requests review of the May 31, 2016 decision by the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) to deny the funding request for Public Prep for Funding Year 2014-2015 due to the failure of Public Prep’s service provider to certify Public Prep’s FCC Form 472 (SLD Invoice ID #: 2268319) prior to the deadline for submission of invoices to USAC.

Public Prep timely filed its BEAR Form 472 and should not be held responsible for its service provider's reliance on USAC's notification system, inability to independently check USAC for pending invoices as per industry standards, and ultimate failure to certify. As will be shown herein, Public Prep, through its consultant ("EducateLLC" or "Consultant"), timely submitted its Form 472 online, and reasonably expected its service provider ("Service Provider" or "Mindshift") to certify the Form 472 due to (1) USAC's stated direct notification rules; and (2) this Commission's 2014 efficiency mandates and order. Notwithstanding, even if Mindshift *never received* direct notification from USAC as Mindshift claims, Public Prep should not bear the consequences of Mindshift's failure to follow the industry best practice of independently checking the USAC platform for pending notifications. Mindshift's inaction has severely impacted Public Prep's mission to provide an excellent education, including critical access to technology resources, to over 1,500 predominantly low-income students.

Moreover, in 2014, the FCC acknowledged this complex and obscure invoicing process. *See In the Matter of Modernizing the E-rate Program for Schools and Libraries, Report and Order and Further Notice of Proposed Rulemaking*, Report and Order, 29 FCC Rcd 8870, 8963 at ¶232 (July 23, 2014) ("E-rate Modernization Order"). As part of the E-rate Modernization Order, the Commission eliminated the requirement that service providers intervene in the Form 472 invoicing process for precisely this reason: the opportunity for inadvertent mistakes or omissions by multiple parties. Public Prep should not be penalized for USAC's inconsistent notice and invoice rules, or for Mindshift's irresponsibility.

RELEVANT BACKGROUND

Public Prep – a non-profit organization which manages high performing public charter schools serving over 1,500 students in the South Bronx and Lower East Side sections of New York City – relies on E-rate reimbursement to procure much needed technology services to its students, especially Internet services or Category 1 services. Public Prep’s E-rate consultant, EducateLLC, filed Public Prep’s Form 472 on October 22, 2015 six days prior to the October 28, 2015 invoicing deadline. *See* Declaration of Rosy Rajasingham at para 3, attached hereto as Exhibit A (“Rajasingham Declaration”). EducateLLC, which has significant experience with E-rate reimbursements, understood that Public Prep’s service provider, Mindshift, would receive a notification email from USAC alerting the service provider to certify the Form 472. *Id* at para 4; *See also* Declaration of Michael McKee at para 4, attached hereto as Exhibit B (“McKee Declaration”).

In “Section 1:Instructions for Completing the Universal Service for Schools and Libraries Billed Entity Applicant Reimbursement Form”, under the “Filing Requirements and General Instructions” section, a sub-section entitled “Where to File?” on USAC’s website clearly indicates that submission notification is directed to the Service Provider. It states: “If you are filing online: You may complete, submit and certify the BEAR in the Apply Online section of our website. The system is designed so that once you make the appropriate certifications, the service provider featured is notified that the BEAR is available for their review and online certification or response to you.” *See* USAC BEAR Help_ Form 472.pdf attached hereto as Exhibit C. This “filing online” section is clearly distinguishable from the “filing on paper”

section, in that the former specifically includes notification language relevant to “system design.”

Id. at p.3

Notwithstanding this instruction, Mindshift claims that it never received notification of the filing, and therefore, did not certify Public Prep’s Form 472 before the October 28th deadline. *See* Declaration John Stewart at para 4, attached hereto as Exhibit D (“Stewart Declaration”). Mindshift also admits that it does not check USAC’s website for pending certifications as part as its standard business practice. Stewart Declaration at par. 5. As confirmed by several other service providers and erate professionals, it is industry best practice for service providers to regularly check the USAC invoice site for pending open certifications. McKee Declaration at para 13. Neither the Consultant, nor Public Prep, were informed that Mindshift had *not* certified the form. Rajasingham Declaration at para 8; McKee Declaration at para 7. The Consultant did not discover that Mindshift failed to certify the Form 472 until on or about December 8th, 2016, when she checked USAC’s website as part of her routine checks for reimbursement approvals. Rajasingham Declaration at para 7. On or about February 22, 2016, Mindshift certified the Form 472 by US mail -- which is not the appropriate method for certifying an online submission completing the invoice process. Stewart Declaration at para 8; McKee Declaration at para 9.

When the Consultant inquired with USAC Support on June 21, 2016 as to why the Service Provider had not received notification, she received an email response that contradicted the information on USAC’s website: all service providers are apparently *not* notified of the Form 472 submission. Rajasingham Declaration at para 10. Instead, service provider notification is given only under specific circumstances – and this information is omitted from the website. *Id.*; *See also* 6/21/16 email to Rosy from USAC Support, attached hereto as Exhibit E. The email

response from USAC Support stated: “Unfortunately this information is not included on the USAC website. The process for the BEAR notification has always been that the email is sent to the last person who certified a BEAR at the SPIN for that entity.” *See* Exhibit E; Rajasingham Declaration at para 11.

On March 11, 2016, Public Prep received a Form 472 (BEAR) Notification Letter from USAC indicating that the requested reimbursement amount would be \$0 (from a \$233,280.00 “funding commitment”) due to “Invoice Received Date [2-26-16] Later Than [sic]”. *See* 3/11/16 Notification Letter, attached hereto as Exhibit F.

On March 7, 2016, Public Prep filed an appeal of the denial with both USAC and the FCC. *See* 3/7/16 Invoice Extension Requests, attached hereto as Exhibit G. The USAC appeal was denied on April 29, 2016, and the FCC appeal was denied on May 31st 2016 and received by Public Prep on June 13, 2016.

DISCUSSION

Public Prep is facing the deleterious consequences of (1) USAC’s inconsistent, non-transparent stated rules upon which its Consultant reasonably relied; and (2) Mindshift’s failure to follow industry/service provider best practices regarding invoice certification. As part of the E-rate Modernization Order, the Commission codified the invoice deadline procedures in an effort to simplify and streamline the e-rate process. *See* E-rate Modernization Order, at par. 6. One of the mandated new modifications was to provide a single one-time invoice filing extension of 120 days to any Petitioner making the request prior to the deadline. *Id.* at par. 240. If the extension is not timely requested, the Commission will only grant waivers of the invoicing

deadline rules under “extraordinary circumstances.” *Id. at* pars. 238, 240 (“[W]e find that it is generally not in the public interest to waive our invoicing rules, and therefore the Bureau should grant waivers of those rules in extraordinary circumstances”).

Public Prep missed the October 28, 2015 extension deadline due to “extraordinary circumstances” beyond its direct control, in reliance on an experienced consultant’s adherence to USAC’s stated rules, and its service providers inability to follow industry standard. EducateLLC submitted Public Prep’s BEAR Form 472 electronically six days *before* the October 28, 2015 deadline. In reliance on the explicit language from USAC’s website, in addition to her comprehensive experience with the E-rate program, the Consultant had the reasonable expectation that USAC would directly notify Mindshift, Public Prep’s service provider, via e-mail, to certify the Form 472. This expectation was (1) rooted in the language from USAC’s website: “[t]he service provider featured is notified that the BEAR is available for their review and online certification...”; and (2) consistent with the E-rate Modernization Order’s mandate to (eventually) remove service providers from the payment reimbursement process. *See* E-rate Modernization Order, at par. 237 (“Because service providers will no longer serve as a pass-through for payment, they will not be required to approve every FCC Form 472.”).

Public Prep and EducateLLC had every reason to rely on the language on USAC’s site, and expect that notification would be sent to Mindshift directly. Public Prep had *no way of knowing* that the notification was *not* sent to the service provider prior to the October 28, 2015 invoice deadline. Public Prep and EducateLLC did not request an extension or waiver, because neither party *was aware* that the submission was incomplete, and therefore late. Moreover, Mindshift’s assertion that it never received notice from USAC to certify Public Prep’s invoices is

wholly insufficient. Even if Mindshift did not receive notice - a claim it cannot prove - as an experienced technology service provider for schools, it should have been checking USAC's website for pending certifications. Thus, Public Prep should not bear the adverse consequences of two hired experts' - Consultant and Service Provider - reliance on USAC's online notification system, especially where the service provider fails to routinely check the USAC database.

Stewart Declaration at para 5: McKee Declaration at para 13

Although it is a fact-based determination, this Commission has made clear what does not constitute "extraordinary circumstances." *See e.g., In the Matter of Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System Bay Saint Louis, Mississippi et al.*, Order, 30 FCC Rcd 4723 (May 11, 2015) ("Hancock Order"); *In the Matter of Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District Ada, Oklahoma et al.*, Order, 31 FCC Rcd 3834 at 4 (April 25, 2016) ("Ada Order"). In *Hancock*, the Commission denied extension requests filed from ten months to three years late, due to employee confusion, lack of understanding of the program rules, or staff turnover. *Hancock Order*, at paras. 9,10. In contrast, Public Prep's consultant filed the Form 472 *on time*, and requested an extension in March, only five months after the deadline and simultaneous to receiving the March 11th BEAR Notification letter formally denying Public Prep's reimbursement. In addition, Public Prep's consultant *did* understand USAC's stated, written rules of the program – and relied on those rules accordingly.

In *Ada*, the FCC denied extension requests similar to those in *Hancock*, in addition to Petitioners who were "*unaware* that the service provider would fail to approve and certify the form before the invoicing deadline." *Ada Order*, at paras. 9, 10 (emphasis added). The

Commission reiterated that “applicants and vendors are responsible for knowing and following our rules...” *Ada Order* at para. 10. In contrast to the *Ada* Petitioners, Public Prep and EducateLLC understood the rules as they were articulated by USAC, and they were indeed *aware* that the service provider should certify. When the Consultant contacted USAC Support regarding the website language, she was told that “[u]nfortunately this [additional] information is not included on the USAC website.” *See* Exhibit F. After acknowledging the omission, USAC Support implied that the Consultant relied on an inaccurate rule: the *last* person to submit the BEAR form is notified of the submission – *not* the service provider necessarily featured on the form 472. This information is critical, and the only recipient of the misfortune associated with its omission is the non-profit organization at severe risk of losing over two-hundred thousand dollars, and the students being deprived of valuable technology resources.

Moreover, the principal purpose of the E-rate Modernization Order was to mandate rules that “yield an invoicing process that is simpler and clearer.” *E-rate Modernization Order* at 232. In describing the previous system, the Commission underscored that the E-rate process “require[d] *significant coordination* between the applicant and service provider for the applicant to receive payment.” *E-rate Modernization Order* at 234 (emphasis added). Thus, in an effort to simplify reimbursement, the FCC removed the service provider from the BEAR reimbursement process altogether by allowing USAC to process reimbursements directly to the Applicant. *Id.* at 237. Stating that service provider certifications on the Form 472 would no longer be needed, the FCC ordered the Media Bureau and OMD (“Office of the Managing Director”) to “work with USAC to implement the new direct reimbursement process” consistent with the changes. *Id.* at 237.

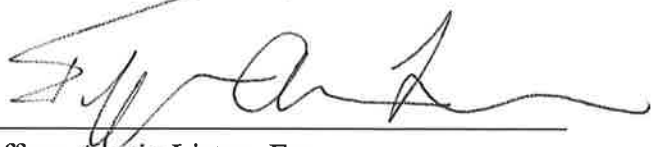
To date, this change has *not* been incorporated into the reimbursement process. USAC's website states that this change will not be implemented until July 1, 2016. *See* USAC Invoice Changes, also attached herein as Exhibit H ("As of July 1, 2016, service providers will no longer be involved in the BEAR certification and submission process. USAC will instead only reimburse applicants directly via electronic transfer.") Meanwhile, until this change is executed, because the service provider is not a party to the preparation and submission of the Form 472, it is often unaware that certification is needed on the form - unless the service provider independently checks. USAC's established practice noted on its website of sending out notification to service providers – a requirement of online submission, not hard copy – seems a reasonable measure until the certification obligation is abandoned entirely in July. In essence, Public Prep is requesting that the Commission waive an invoicing rule which enables (1) experts to rely on potentially inaccurate or incomplete critical notice procedures, (2) that will shortly no longer be in effect.

CONCLUSION

Public Prep, a non-profit organization serving thousands of low-income families, should not be penalized for over \$200,000 due to the failure of Mindshift to follow industry best practices regarding certification, and USAC's obscure invoice process and notification system. Denial of this BEAR reimbursement presents significant financial hardship to Public Prep's schools, ultimately depriving economically disadvantaged students of much needed Internet resources. Accordingly, Public Prep requests that the Commission grant a waiver of its invoicing deadline.

Respectfully submitted,

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